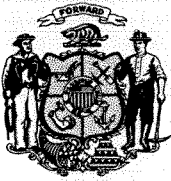


5



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0128/1
MDK:kjf&cs:pg
Stays

WER
11-7
11am

O-NOTE

SENATE SUBSTITUTE AMENDMENT ,
TO 2007 SENATE BILL 107
AB 207

RM
has
been
RMN

gen cat

1 AN ACT ~~to repeal~~ 60.23 (4), 66.0421 (1) (a), 66.0421 (1) (b), 66.0422 (1) (a), 196.04
2 (4) (a) 1. and 196.204 (7); **to renumber** 196.04 (4) (a) 2. a. to e.; **to renumber**
3 **and amend** 943.46 (1) (a); **to consolidate, renumber and amend** 196.04 (4)
4 (a) (intro.) and 2. (intro.); **to amend** 11.01 (17g), 20.155 (1) (title), 20.155 (1) (g),
5 66.0419 (3) (intro.), 66.0419 (3) (b), 66.0419 (4), 66.0421 (title), 66.0421 (2),
6 66.0421 (3), 66.0421 (4), 66.0422 (title), 66.0422 (2) (intro.), 66.0422 (3) (b),
7 66.0422 (3n), 70.111 (25), 76.80 (3), 77.52 (2) (a) 12., 100.195 (1) (c) 2., 182.017
8 (1), 196.01 (1g), 196.01 (9m), 196.04 (4) (b), 196.195 (5), 196.203 (1m), 196.203
9 (3) (b) (intro.), 196.203 (3) (b) 2., 196.203 (3) (c), 196.203 (3) (d), 196.203 (3) (e)
10 1. (intro.), 196.44 (1), 196.44 (2), 196.50 (1) (b) 2. e., 196.50 (1) (c), 196.85 (1m)
11 (b), 943.46 (title), 943.46 (2) (a), 943.46 (2) (b), 943.46 (2) (c), 943.46 (2) (d),
12 943.46 (2) (e), 943.46 (2) (f), 943.46 (2) (g) and 943.46 (5); **to repeal and**
13 **recreate** 100.195 (1) (h) 1., 100.209 and 196.01 (1p); and **to create** 20.155 (4),

INSEAT 2-11

66.0420, 66.0421 (1) (c), 66.0421 (1) (d), 66.0422 (1) (d), 196.01 (12g), 196.01 (12m), 196.01 (12r), 196.85 (1m) (d), 943.46 (1) (d) and 943.46 (1) (e) of the statutes; **relating to:** regulating video service providers, granting rule-making authority, making ^{an} appropriation, and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 11.01 (17g) of the statutes is amended to read:

11.01 (17g) "Public access channel" means a channel that is required under a franchise granted or renewed under s. 66.0419 (3) (b) by a city, village, or town to a cable operator, as defined in s. 66.0419 (2) (b), and that is used for public access purposes, but does not include a channel that is used for governmental or educational purposes.

SECTION 2. 20.155 (1) (title) of the statutes is amended to read:

20.155 (1) (title) REGULATION OF PUBLIC UTILITIES AND VIDEO SERVICE FRANCHISEES.

SECTION 3. 20.155 (1) (g) of the statutes is amended to read:

20.155 (1) (g) Utility and video service regulation. The amounts in the schedule for the regulation of utilities and video service franchisees. Ninety percent of all moneys received by the commission under s. 196.85, 196.855, or 201.10 (3) shall be credited to this appropriation. Ninety percent of all receipts from the sale of miscellaneous printed reports and other copied material, the cost of which was originally paid under this paragraph, shall be credited to this appropriation.

SECTION 4. 20.155 (4) of the statutes is created to read:

20.155 (4) BROADBAND GRANT PROGRAM. (g) *Grants.* All moneys received under s. 66.0420 (9) (h) 1. for the purpose of making grants under s. 66.0420 (9) (h) 2.

SECTION 5. 60.23 (4) of the statutes is repealed.

1 **SECTION 6.** 66.0419 (3) (intro.) of the statutes is amended to read:

2 66.0419 (3) FRANCHISES. (intro.) ~~—A—~~ Except as provided in s. 66.0420, a
3 municipality may operate or regulate a cable television system and in such operation
4 and regulation may, without limitation because of enumeration:

5 **SECTION 7.** 66.0419 (3) (b) of the statutes is amended to read:

6 66.0419 (3) (b) Grant, renew, or revoke one or more franchises authorizing the
7 construction and operation of a cable television system and govern the operation of
8 any franchise granted.

9 **SECTION 8.** 66.0419 (4) of the statutes is amended to read:

10 66.0419 (4) CONSTRUCTION. The authority granted under this section to a
11 municipality to operate and regulate a cable television system is in addition to any
12 other power which the municipality has and the authority of a municipality to
13 operate and regulate a cable television system is limited only by the express
14 language of this section and s. 66.0420.

15 **SECTION 9.** 66.0420 of the statutes is created to read:

16 **66.0420 Video service. (1) LEGISLATIVE FINDINGS.** The legislature finds all
17 of the following:

18 (a) The economy in the state of Wisconsin will be enhanced by investment in
19 new communications and video services, including broadband service facilities and
20 fiber optic and Internet protocol technologies.

21 (b) Video services bring important daily benefits to Wisconsin consumers by
22 providing news, education, and entertainment.

23 (c) Competitive video service providers are capable of providing new video
24 programming services and competition to Wisconsin consumers and of decreasing
25 the prices for video programming services paid by Wisconsin consumers.

1 (d) Although there has been some competitive entry into the facilities-based
2 video programming market since s. 66.0419 was enacted, further entry by
3 facilities-based providers could benefit consumers, if video services are equitably
4 available to all Wisconsin consumers at reasonable prices.

5 (e) The provision of competitive video services is a matter of statewide concern
6 that extends beyond the boundaries of individual municipalities. However, public
7 rights-of-way are limited resources over which a municipality has a custodial duty
8 and ownership interest to ensure that the public rights-of-way are used, repaired,
9 and maintained in a manner that best serves the public interest.

10 (f) This section is intended to enable rapid and widespread entry by competitive
11 video service providers which will bring to Wisconsin consumers the benefits of video
12 competition, including providing consumers with more choice, lower prices, higher
13 speed and more advanced Internet access, more diverse and varied news, public
14 information, education, and entertainment programming; and will bring to this state
15 and municipalities the benefits of new infrastructure investment, job growth, and
16 innovation in broadband service and Internet protocol technologies and deployment.

17 (g) This section is intended to best ensure equal treatment and parity among
18 different providers of video services and different technologies for providing such
19 services.

20 **(2) DEFINITIONS.** In this section:

21 (a) "Affiliate", when used in relation to any person, means another person who
22 owns or controls, is owned or controlled by, or is under common ownership or control
23 with such person.

24 (b) "Basic video service" means any video service offering or service tier which
25 includes the retransmission of local television broadcast signals.

1 (c) "Broadband service" means a high-speed service connection to the public
2 Internet that is capable of supporting, in at least one direction, a speed in excess of
3 200 kilobits per second to a network demarcation point at a subscriber's premises.

4 (d) "Cable franchise" means a franchise granted under s. 66.0419 (3) (b).

5 (e) "Cable operator" has the meaning given in 47 USC 522 (5).

6 (f) "Cable service" has the meaning given in 47 USC 522 (6).

7 (g) "Cable system" has the meaning given in 47 USC 522 (7).

8 (h) "Commission" means the public service commission.

9 (i) "Competitive video service provider" means a person that is providing or
10 seeks to provide video service in an area where there is at least one incumbent cable
11 operator.

12 (j) "Household" means any individual or group of individuals who are living
13 together as one economic unit.

14 (k) "Incumbent cable operator" means a person that, immediately before the
15 effective date of this paragraph.... [revisor inserts date], provided cable service in a
16 municipality under a cable franchise.

17 (L) "Issued" means, with respect to a video service franchise, issued or
18 considered to be issued by the commission.

19 (m) "Low-income household" means a household whose aggregate individual
20 and group income is not more than 150 percent of the poverty line as determined
21 under 42 USC 9902 (2).

22 (n) "Municipality" means a city, village, or town.

23 (o) "Municipally regulated cable operator" means an incumbent cable operator
24 that has not elected to terminate its cable franchise under sub. (3) (b) 1. b.

1 (p) "PEG channel" means a channel designated for noncommercial public,
2 educational, or governmental use.

3 (q) "PEG channel manager" means a person authorized by a municipality to
4 manage PEG channels.

5 (qm) "PEG support fee" means a fee required under sub. (7) (d) 1.

6 (r) "Public rights-of-way" means the areas on, below, or above a public
7 roadway, highway, street, public sidewalk, alley, or waterway, and includes utility
8 easements dedicated for compatible uses.

9 (s) "Service tier" means a category of video service for which a separate rate is
10 charged.

11 (t) "Telecommunications service area" means the area designated by the
12 commission as the area in which a telecommunications provider was obligated to
13 provide noncompetitive local telephone service.

14 (u) "Video programming" has the meaning given in 47 USC 522 (20).

15 (v) "Video service" means video programming and subscriber interaction, if any,
16 that is required for the selection or use of video programming, and which is provided
17 through wireline facilities located at least in part in the public rights-of-way
18 without regard to delivery technology, including Internet protocol technology. "Video
19 service" includes cable service. "Video service" does not include any video
20 programming provided by a commercial mobile service provider, as defined in 47
21 USC 332 (d), or any video programming provided solely as part of, and via, a service
22 that enables users to access content, information, electronic mail, or other services
23 offered over the public Internet.

24 (w) "Video service area" means, with respect to a video service franchisee, the
25 geographic area designated by the video service franchisee in its application for a

1 video service franchise as the geographic area in which it will offer video services
2 during the period of its video service franchise.

3 (x) "Video service franchise" means a franchise issued by the commission under
4 sub. (4) (g) 1.

5 (xm) "Video service franchise fee" means a fee required under sub. (7) (c).

6 (y) "Video service franchisee" means a person issued a video service franchise
7 by the commission.

8 (z) "Video service network" means wireline facilities, or any component thereof,
9 located at least in part in public rights-of-way that deliver video service, without
10 regard to delivery technology, including Internet protocol technology or any other
11 technology. "Video service network" includes a cable system.

12 **(3) AUTHORITY TO PROVIDE VIDEO SERVICE.** (a) *Public rights-of-way.* 1. Except
13 for a municipally regulated cable operator, no person may provide video service in
14 this state, or use the public rights-of-way for installing or constructing facilities for
15 the provision of video service, unless the commission has issued a video service
16 franchise to the person.

17 2. This section does not affect a municipality's authority under s. 182.017 (1)
18 to grant permits for the use of public rights-of-way to install or construct facilities
19 to provide video service. A municipality is not required to grant a permit under s.
20 182.017 (1) to install or construct facilities to provide video service to a person that
21 has not been issued a video service franchise or a cable franchise.

22 (b) *Incumbent cable operators.* 1. An incumbent cable operator may do one of
23 the following:

1 a. Upon expiration of the incumbent cable operator's cable franchise, apply to
2 the municipality that granted the cable franchise for renewal of the cable franchise
3 under s. 66.0419 (3).

4 b. At any time prior to expiration of the incumbent cable operator's cable
5 franchise, terminate the cable franchise and apply to the commission for a video
6 service franchise under sub. (4). At least 180 days before making an application
7 under sub. (4), the incumbent cable operator shall provide advance notice to the
8 commission, the municipality that granted a cable franchise to the incumbent cable
9 operator, and the municipality's PEG channel manager. Termination of the cable
10 franchise shall be effective on the date that the commission issues a video service
11 franchise to the incumbent cable operator.

12 2. An incumbent cable operator that elects to terminate its cable franchise shall
13 do all of the following:

14 a. Pay to the municipality that granted the cable franchise and any PEG
15 channel manager any accrued but unpaid amounts that are due under the cable
16 franchise. Such amounts must be remitted before the 46th day after the date that
17 termination of the cable franchise is effective. If the incumbent cable operator has
18 a credit for any amounts due under the cable franchise that the incumbent cable
19 operator has prepaid, the incumbent cable operator may deduct the amount of the
20 credit from any future PEG support or video service franchise fees that the
21 incumbent cable operator is required to pay to the municipality.

22 b. Pay to the municipality that granted the cable franchise and the
23 municipality's PEG channel manager, at the time that they would have been due, all
24 monetary payments for PEG channels that would have been due during the
25 remaining term of the cable franchise had it not been terminated by the incumbent

1 cable operator. All payments made by an incumbent cable operator under this subd.
2 2. b. shall be credited against any PEG support or video service franchise fees that
3 the incumbent cable operator otherwise owes to the municipality.

4 3. An incumbent cable operator that elects to terminate its cable franchise, and
5 any successor in interest, is required to comply with any requirements of the
6 municipality that granted the franchise that require the incumbent cable operator
7 to provide access to video service and that are in effect on the effective date of this
8 subdivision [revisor inserts date].

9 (c) *Video service franchisees.* 1. For purposes of 47 USC 521 to 573, the
10 commission is the franchising authority for video service franchisees, and
11 municipalities are the exclusive franchising authorities for municipally regulated
12 cable operators. The commission may not impose franchising requirements on
13 municipally regulated cable operators and municipalities may not impose
14 franchising requirements on video service franchisees. Notwithstanding any other
15 provision of this section, a video service franchisee that uses telecommunications
16 facilities to provide video service is not obligated to provide video service outside the
17 video service franchisee's telecommunications service area.

18 2. A video service franchisee is not subject to any other franchise obligations
19 under state law within its video service area, except as provided in this section.
20 Except as provided under this section, neither the commission nor any municipality
21 may require a video service franchisee to obtain a separate franchise or pay any
22 franchise fee on video service.

23 (4) VIDEO SERVICE FRANCHISE. (a) *Application; affidavit.* An applicant for a
24 video service franchise shall submit an application to the commission that includes

1 a completed affidavit signed by an officer or general partner of the applicant that
2 affirms all of the following:

3 1. That the applicant has filed or will timely file with the federal
4 communications commission all forms required by that agency in advance of offering
5 video service in this state.

6 2. That the applicant agrees to comply with all applicable federal and state
7 statutes, rules, and regulations.

8 3. That the applicant agrees to comply with all applicable regulations of a
9 municipality.

10 (b) *Application; video service area.* 1. An application under par. (a) shall
11 include an exact description of the video service area and identify the number of
12 low-income households within the video service area. The video service area shall
13 be described in terms of one of the following:

- 14 a. Telephone service exchange areas.
- 15 b. A collection of United States Census Bureau 13-digit block numbers.
- 16 c. Geographic information system digital boundaries meeting or exceeding
17 national map accuracy standards established by the U.S. Geological Survey, if the
18 area is not large enough to be described as specified in subd. 1. a. or b.

19 d. Municipalities.

20 2. If the applicant is an incumbent cable operator that seeks to offer video
21 service within one or more municipalities that have issued a cable franchise to the
22 applicant, the video service area described under subd. 1. must consist of an area no
23 smaller than the aggregate of the service areas under each cable franchise issued by
24 a municipality in which the incumbent cable operator seeks to offer video service.

1 (c) *Application; other requirements.* An application under par. (a) shall contain
2 all of the following:

3 1. The location and telephone number of the applicant's principal place of
4 business within this state.

5 2. The names of the applicant's principal executive officers who are responsible
6 for communications concerning the application and the services to be offered
7 pursuant to the application.

8 3. The applicant's legal name and any name or names under which the
9 applicant does or will provide video services in this state.

10 4. A certification that the applicant concurrently delivered a copy of the
11 application to each municipality that includes all or any part of the video service area
12 described under par. (b).

13 5. The expected date that the applicant will initially offer video service in the
14 video service area described under par. (b). If a video service franchisee does not offer
15 video service within 3 months after the expected date, the video service franchisee
16 shall amend its application to update the expected date and explain the delay in
17 offering video service.

18 6. Adequate assurance that the applicant possesses the financial, managerial,
19 legal, and technical qualifications necessary to construct and operate the proposed
20 system, promptly repair any damage to the public rights-of-way caused by the
21 applicant, and pay the cost of removal of its facilities.

22 7. The applicant's general standards related to customer service established
23 under s. 100.209 (3).

24 (d) *Confidentiality.* Information included in an application under par. (a), or
25 subsequently reported to the commission by a video service franchisee, shall be

1 subject to the commission's rules under s. 196.135 (2), except that the commission
2 may not treat as confidential any of the following:

3 1. Information regarding the specific locations where access to video service is
4 offered or available.

5 2. Aggregate information included in reports required under this section.

6 (e) *Internet posting.* Subject to par. (d), the commission shall post all
7 applications for video service franchises on its Internet Web site no later than 5
8 business days after receiving an application.

9 (f) *Completeness notice.* No later than 15 business days after receiving an
10 application for a video service franchise, the commission shall notify the applicant
11 whether the application is complete. If the application is not complete, the
12 commission shall state in its notice the reasons the application is incomplete, and the
13 applicant may resubmit the application.

14 (g) *Issuance.* 1. No later than 30 business days after the commission's receipt
15 of a complete application, the commission shall issue a video service franchise to the
16 applicant. If the commission does not notify an applicant regarding the completeness
17 of the application before the deadline specified in par. (f), or the commission does not
18 issue a video service franchise to an applicant before the deadline under this
19 paragraph, the commission is considered to have issued a video service franchise to
20 the applicant on the 30th business day after the commission receives the application.

21 2. No later than 3 business days after issuing a video service franchise to an
22 applicant, the commission shall notify each municipality that includes any part of
23 the video service area described by the applicant under par. (b).

24 (h) *Transfer.* A video service franchisee may transfer its video service franchise
25 to any successor in interest if the successor in interest submits, no later than 15

1 business days before completion of the transfer, a notice of the transfer to the
2 commission and each municipality that includes any part of the video service area.
3 The successor in interest may not provide video service unless the successor in
4 interest applies for, and is issued, a video service franchise under this subsection.
5 The commission may not issue a video service franchise to the successor in interest
6 if any of the following apply:

7 1. The video service franchisee that transferred the video service franchise to
8 the successor in interest has committed a material and continuing violation of this
9 section.

10 2. The successor in interest has exhibited a pattern of noncompliance with
11 customer service standards.

12 3. The successor in interest is insolvent.

13 (i) *Termination; video service area modification.* 1. Except as provided in subd.
14 2., a video service franchisee may terminate its video service franchise or modify its
15 video service area by submitting a notice of the termination or modification to the
16 commission and each municipality that includes any part of the video service area.
17 The commission may not take any action regarding the notice.

18 2. A video service franchisee may not terminate its video service franchise or
19 modify its video service area if any of the following apply:

20 a. The termination or modification results in an area in which no video service
21 is available from any provider.

22 b. The termination or modification is based on the race or income of the
23 residents in the local area in which the residents reside.



INSEPT 14-7 ✓

1 (j) *Expiration and renewal.* A video service franchise expires 10 years after the
2 date that the commission issues the franchise. Upon expiration, a video service
3 franchisee shall reapply for a video service franchise.

4 (k) *Commission expenses.* The commission shall bill an applicant or video
5 service franchisee under s. 196.85 (1) any expense incurred by the commission with
6 respect to an application or any other matter regarding the applicant or video service
7 franchisee.

8 (5) PEG CHANNELS. (a) *Channel capacity; number of channels.* 1. Except as
9 provided in subd. 2., a municipality that includes any portion of the video service area
10 of a video service franchisee may require the video service franchisee to do all of the
11 following, and the video service franchisee shall take any required action no later
12 than 90 days after the municipality notifies the video service franchisee of the
13 requirement or than the date on which the video service franchisee begins to provide
14 video service in the municipality, whichever is later:

15 a. Designate the same amount of capacity on its video service network for PEG
16 channels as an incumbent cable operator was required to designate under a cable
17 franchise that was granted to the incumbent cable operator by the municipality and
18 that was in effect on January 1, 2007.

19 b. Retransmit to its subscribers the same number of PEG channels as an
20 incumbent cable operator was required to retransmit under a cable franchise that
21 was granted to the incumbent cable operator by the municipality and that was in
22 effect on January 1, 2007.

23 2. If a municipality that includes any portion of the video service area of a video
24 service franchisee was provided less than 3 PEG channels by an incumbent cable
25 operator on January 1, 2007, then, under subd. 1., the municipality may require the

1 video service franchisee to designate sufficient capacity on its video service network
2 for no more than 3 PEG channels and retransmit to its subscribers no more than 3
3 PEG channels.

4 3. Any time that programming on any PEG channel that a municipality
5 requires a video service franchisee to retransmit under this paragraph exceeds 40
6 hours per week as measured on a quarterly basis, the municipality may require the
7 video service franchisee to designate sufficient capacity on its video service network
8 for one additional PEG channel and retransmit to its subscribers one additional PEG
9 channel. The municipality shall provide the video service franchisee with a written
10 notice that specifies the number of PEG channels used by the municipality and
11 verifies that the additional PEG channel will be put into actual use. No later than
12 90 days after receiving the notice, the video service franchisee shall comply with the
13 requirement. The additional PEG channel may not be used for any purpose other
14 than for carrying additional PEG channel programming.

15 (b) *Transmission duties.* 1. If a municipality produces or maintains PEG
16 channel programming in a manner or form that is compatible with a video service
17 franchisee's video service network and that permits the video service franchisee to
18 comply with the requirements of subd. 2., the municipality shall transmit the
19 programming to the video service franchisee in that manner or form. If the
20 municipality does not produce or maintain PEG channel programming in such
21 manner or form, the video service franchisee shall be responsible for any changes in
22 the manner or form of the transmission that are necessary to make PEG channel
23 programming compatible with the technology or protocol used by the video service
24 franchisee to deliver services. If a video service franchisee is required to make such
25 changes to the manner or form of the transmission, the municipality shall provide

1 reasonable access to the video service franchisee that allows the video service
2 franchisee to transmit the PEG channel programming in an economical manner
3 subject to the requirements of subd. 2.

4 2. A video service franchisee shall retransmit PEG channels to its subscribers
5 with visual and audio quality and functionality that is equivalent, from the viewing
6 perspective of the subscriber, to that of commercial channels carried on the video
7 service franchisee's basic video service offerings or service tiers and without the need
8 for any equipment other than the equipment necessary to receive the video service
9 franchisee's basic video service offerings or service tiers.

10 3. A video service franchisee shall carry PEG channels on its basic video
11 service. To the extent feasible, PEG channels may not be separated numerically from
12 other channels carried on the video service franchisee's basic video service, and the
13 channel numbers for PEG channels shall be the same channel numbers used by an
14 incumbent cable operator unless prohibited by federal law. After the initial
15 designation of PEG channel numbers, the channel numbers may not be changed
16 without the agreement of the municipality or the municipality's PEG channel
17 manager, unless the change is required by federal law. Each channel shall be capable
18 of carrying a National Television Systems Committee television signal.

19 (c) *Fees prohibited.* A video service franchisee may not charge a municipality,
20 a municipality's PEG channel manager, or a municipality's PEG channel
21 programming providers any fee for complying with this subsection.

22 (d) *Interconnection.* Video service franchisees and incumbent cable operators
23 shall negotiate in good faith amongst themselves to interconnect their video service
24 networks, if needed, for the purpose of complying with this subsection.
25 Interconnection may be accomplished by direct cable, microwave link, satellite, or

1 other reasonable method of connection. Video service franchisees and incumbent
2 cable operators shall provide such interconnection on reasonable terms and
3 conditions and may not withhold such interconnection. If video service franchisees
4 and incumbent cable operators cannot reach a mutually acceptable interconnection
5 agreement, a municipality may require an incumbent cable operator to allow a video
6 service franchisee to interconnect its video service network with the incumbent cable
7 operator's video service network at a technically feasible point on their video service
8 networks. If no technically feasible point for interconnection between a video service
9 franchisee and incumbent cable operator is available, the video service franchisee
10 and incumbent cable operator shall each make an interconnection available to PEG
11 channel local origination points and shall provide the facilities necessary for the
12 interconnection. The cost of any interconnection shall be borne by a video service
13 franchisee unless otherwise agreed to by the parties. The interconnection required
14 by this paragraph shall be completed within the deadline for taking action required
15 under par. (a) 1. that is specified in par. (a) 1. (intro.).

16 (e) *PEG channel usage.* PEG channels required by a municipality under this
17 subsection shall be for the exclusive use of the municipality, or the municipality's
18 PEG channel manager, to provide public, education, and government programming,
19 and may be used only for noncommercial purposes, except that advertising,
20 underwriting, or sponsorship recognition may be carried on the channels for the
21 purpose of funding public, education, and government access related activities.

22 (f) *PEG channel listing.* A video service franchisee shall provide a listing of
23 PEG channels on channel cards and menus provided to subscribers in a manner
24 equivalent to other channels if the video service franchisee uses such cards and
25 menus. A video service franchisee shall provide a listing of PEG channel

1 programming on its electronic program guide if such a guide is used by the video
2 service franchisee. A municipality shall provide a video service franchisee or an
3 agent designated by a video service franchisee with program schedules and
4 information in a timely manner.

5 (g) *Programming.* 1. A person that produces programming for broadcast on
6 a PEG channel is solely responsible for the content of the programming. A video
7 service franchisee may not exercise any editorial control over any programming on
8 any PEG channel.

9 2. A video service franchisee is not subject to any civil or criminal liability for
10 any program carried on any PEG channel.

11 (h) *Enforcement.* In an action to enforce this subsection, a court may not
12 prohibit a video service franchisee from providing video service or require a video
13 service franchisee to terminate video service.

14 (6) EMERGENCY ALERT SYSTEM. A video service franchisee shall comply with all
15 requirements of the federal communications commission regarding the distribution
16 and notification of federal, state, and local emergency messages over the emergency
17 alert system that apply to cable operators. A video service franchisee shall provide
18 a requesting municipality with sufficient information regarding how to submit, via
19 telephone or Web site listing, a local emergency alert for distribution over its video
20 service network. A municipality that requires a municipally regulated cable
21 operator to comply with emergency alert system message or service requirements
22 that are in addition to the requirements imposed under this subsection may impose
23 such additional requirements on a video service franchisee that provides video
24 service within the municipality. A video service franchisee may provide a local

1 emergency alert to an area larger than the boundaries of the municipality issuing the
2 emergency alert.

3 (7) MUNICIPALITY FEES. (a) *Gross revenue calculation.* 1. 'Generally.' Gross
4 revenue of a video service franchisee consists of all consideration of any kind or
5 nature, including cash, credits, property, and the monetary value of in-kind
6 contributions, received by the video service franchisee for the operation of a video
7 service network to provide video service within the video service franchisee's video
8 service area that is located within a municipality.

9 2. 'Inclusions.' Gross revenue of a video service franchisee includes all of the
10 following:

- 11 a. Recurring charges for video service.
- 12 b. Event-based charges for video service, including pay-per-view and
13 video-on-demand charges.
- 14 c. Rental of set top boxes and other video service equipment.
- 15 d. Service charges related to the provision of video service, including activation,
16 installation, and repair charges.
- 17 e. Administrative charges related to the provision of video service, including
18 service order and service termination charges.
- 19 f. Late payment fees or charges, insufficient funds check charges, and other
20 charges assessed to recover the costs of collecting delinquent payments.
- 21 g. A pro rata portion of all revenue that is derived by the video service
22 franchisee or its affiliates pursuant to regional or national compensation
23 arrangements for advertising, promoting, or exhibiting any products or services, and
24 that is also derived from the operation of the video service franchisee's video service
25 network to provide video service within a municipality. The pro rata portion shall

1 be determined by dividing the number of the video service franchisee's subscribers
2 in the municipality by the total number of the video service franchisee's subscribers
3 in the regional or national area covered by the compensation arrangement.

4 h. Commissions that are received by the video service franchisee as
5 compensation for promoting or exhibiting any products or services on the video
6 service franchisee's video service network, such as a home shopping or similar
7 channel.

8 i. Video service franchise fees.

9 3. 'Exclusions.' Gross revenue of a video service franchisee does not include any
10 of the following:

11 a. Revenues not actually received, including revenues that are billed.

12 b. Refunds, discounts, or other price adjustments that reduce the amount of
13 gross revenue received by the video service franchisee to the extent that the refund,
14 discount, or other price adjustment is attributable to video service.

15 c. Revenue from the sale of video service for resale to a purchaser that is
16 required to collect a video service franchise fee from the purchaser's subscribers, but
17 only if the purchaser certifies in writing that the purchaser will resell the service
18 within the municipality to which the video service franchise fee is payable and that
19 the purchaser will pay the video service franchise fee to the municipality.

20 d. Any tax or fee of general applicability imposed upon the subscribers or the
21 transaction by a city, state, federal, or any other governmental entity and collected
22 by the video service franchisee and required to be remitted to the taxing entity,
23 including sales and use taxes.

24 e. Security deposits collected from subscribers.

1 f. Amounts paid by subscribers to home shopping or similar vendors for
2 merchandise sold through any home shopping channel offered as part of the video
3 service.

4 4. 'Bundled services.' a. Except as provided in subd. 4. b., if a video service is
5 bundled, packaged, or integrated functionally with other services, capabilities, or
6 applications, the portion of the video service franchisee's revenue that is attributable
7 to the other services, capabilities, or applications shall be included in the calculation
8 of the video service franchisee's gross revenue unless the video service franchisee can
9 reasonably identify the division or exclusion of the revenue from its books and
10 records that are kept in the regular course of business.

11 b. Gross revenue of a video service franchisee does not include any revenue
12 received from nonvideo services, including revenue received from
13 telecommunications services, information services, or the provision of directory or
14 Internet advertising, including yellow pages, white pages, banner advertisement,
15 and electronic publishing, or any other revenues attributed by a video service
16 franchisee to nonvideo service in accordance with the video service franchisee's books
17 and records kept in the regular course of business and in accordance with any
18 applicable laws, rules, regulations, standards, or orders. This subd. 4. b. applies
19 regardless of whether the nonvideo services are bundled, packaged, or functionally
20 integrated with video services.

21 5. 'Affiliates.' Revenue of an affiliate of a video service franchisee shall be
22 included in the video service franchisee's gross revenue to the extent the treatment
23 of the revenue as revenue of the affiliate rather than of the video service franchisee
24 has the effect of evading the requirement to pay a video service franchise fee or PEG
25 support fee.

1 (b) *Notice.* No less than 10 days before offering video service in a municipality,
2 a video service franchisee shall notify the municipality.

3 (c) *Video service franchise fee.* 1. In any municipality in which a video service
4 franchisee offers video service on a commercial basis, the video service franchisee
5 shall, upon request by such a municipality, be liable for and pay a video service
6 franchise fee to the municipality. The video service franchise fee shall equal one of
7 the following percentages of the video service franchisee's gross revenues, whichever
8 is less:

9 a. Five percent.

10 b. The percentage of revenues that the municipality required, on the effective
11 date of this subd. 1. b. [revisor inserts date], an incumbent cable operator to pay
12 as a franchise fee under s. 66.0419 (3) (c).

13 2. Payment of the video service franchise fee is due on a quarterly basis 45 days
14 after the close of the calendar quarter. If mailed, the video service franchise fee is
15 considered paid on the date it is postmarked.

16 3. Except as otherwise provided in this section or s. 66.0425 or 182.017 (1), a
17 municipality may not demand any additional fees or charges from a video service
18 franchisee and may not demand the use of any other calculation method other than
19 allowed under this subsection.

20 (d) *PEG support fee.* 1. A video service franchisee shall, upon request by a
21 municipality in which the video service franchisee provides video service, pay to the
22 municipality or the municipality's PEG channel manager, as support for PEG
23 channels, a PEG support fee equal to not less than 1 percent of the video service
24 franchisee's gross revenue or the percentage of the video service franchisee's gross
25 revenue that results from performing the following calculation, whichever is greater:

1 a. Determining the aggregate annual amount that each incumbent cable
2 operator that provides cable service in the video service franchisee's service area is
3 obligated to pay the municipality or its PEG channel manager under a cable
4 franchise, agreement, or contract in effect on January 1, 2007, including any
5 payments required under sub. (3) (b) 2. b., and including the amount resulting by
6 dividing the total amount of any lump sum payments required to be made over the
7 term of such franchise, contract, or agreement by the number of years of the term of
8 the franchise, contract, or agreement.

9 b. Determining the aggregate annual amount of gross revenue during the
10 preceding calendar year of each incumbent cable operator specified in subd. 1. a.

11 c. Determining the percentage that results from dividing the amount
12 determined under subd. 1. a. by the amount determined under subd. 1. b.

13 2. PEG support fees are due on a quarterly basis and must be paid no later than
14 45 days after the close of a calendar quarter. PEG support fees are first due for the
15 quarter that includes the 90th day after a municipality requests payment of the fees
16 or the date on which the video service franchisee begins to provide video service in
17 the municipality, whichever is later. Each payment shall include a statement
18 explaining the basis for the calculation of the PEG support fee. If mailed, the PEG
19 support fee is considered paid on the date it is postmarked.

20 3. A municipality may require a video service franchisee to provide the
21 municipality or the municipality's PEG channel manager with any information
22 sufficient to calculate the PEG support fee required under this paragraph or the
23 monetary payments for PEG channels required under sub. (3) (b) 2. b.

(e) *Bill itemization.* A video service franchisee may identify and collect the amount of the video service franchise fee or PEG support fee as separate line items on the regular bill of each subscriber.

(f) *Accounting.* All determinations and computations under this subsection shall be made pursuant to generally accepted accounting principles.

(8) AUDITS; PAYMENTS. (a) Upon receiving a notice under sub. (4) (g) 2. that a video service franchisee has received a video service franchise, a municipality shall notify the video service franchisee of the municipality's requirements for the video service franchisee to submit to an audit of its books and records. Such requirements shall be the same as those that apply to incumbent cable operators providing video service in the municipality on the effective date of this paragraph [revisor inserts date]. If there are no such incumbent cable operators, the municipality may impose reasonable audit requirements.

(b) Acceptance by a municipality of amounts remitted by a video service franchise shall not be construed as an accord that the amounts are correct.

(c) Any additional amount due after an audit shall be paid within 30 days after the municipality's submission of an invoice for the sum.

(9) DISCRIMINATION; ACCESS TO SERVICES. (a) *Definitions.* In this subsection:

1. "Basic local exchange service area" means the area on file with the commission in which a large telecommunications video service franchisee provides basic local exchange service, as defined in s. 196.01 (1g). ✓

2. "Department" means the department of agriculture, trade and consumer protection. ✓

3. "Large telecommunications video service franchisee" means any of the following: ✓

1 a. A video service franchisee that is a telecommunications video service
2 provider and that, on January 1, 2007, had more than 500,000 basic local exchange
3 access lines in this state.

4 b. An affiliate of a video service franchisee described under subd. 3. a. 92 ✓

5 3 4 "Telecommunications video service provider" means a person that uses
6 facilities for providing telecommunications service, as defined in s. 196.01 (9m), also
7 to provide video service. ✓

8 (b) *Access determination.* For purposes of this subsection, a video service
9 franchisee provides access to its video service to a household if the video service
10 franchisee is capable of providing video service at the household address using any
11 technology, other than direct-to-home satellite service, that provides two-way
12 broadband Internet capability, and video programming, content, and functionality
13 which are demonstrably similar to video programming, content, and functionality
14 provided through the video service franchisee's video service system, regardless of
15 whether any customer at the household address has ordered service or whether the
16 owner or landlord or other responsible person has granted access to the household
17 address. If more than one technology is used, access is provided only if the
18 technologies provide similar two-way broadband Internet capability and similar
19 video programming.

20 (c) *Discrimination prohibited.* 1. No video service franchisee may deny access
21 to video service to any group of potential residential customers in the video service
22 franchisee's video service area because of the race or income of the residents in the
23 local area in which the group resides.

24 2. It is a defense to an alleged violation of subd. 1. based on income if the video
25 service franchisee has met either of the following conditions:

1 a. No later than 3 years after the date on which the video service franchisee
2 began providing video service under this section, at least 25 percent of households
3 with access to the video service franchisee's video service are low-income
4 households.

5 b. No later than 5 years after the date on which the video service franchisee
6 began providing video service under this section, at least 30 percent of the
7 households with access to the video service franchisee's video service are low-income
8 households.

9 (d) *Access requirements.* 1. A large telecommunications video service
10 franchisee shall provide access to its video service to the following percentages of
11 households within the large telecommunications video service franchisee's basic
12 local exchange service area:

13 a. Not less than 35 percent no later than 3 years after the date on which the
14 large telecommunications video service franchisee began providing video service
15 under this section.

16 b. Not less than 50 percent no later than 5 years after the date on which the
17 large telecommunications video service franchisee began providing video service
18 under this section, or no later than 2 years after at least 30 percent of households
19 with access to the large telecommunications video service franchisee's video service
20 subscribe to the service for 6 consecutive months, whichever occurs later. ✓

21 2. A large telecommunications video service franchisee shall file an annual
22 report with the ~~department~~ ^{Commission} regarding the large telecommunications video service
23 franchisee's progress in complying with subd. 1.

24 (e) *Extensions and waivers.* A video service franchisee may apply to the
25 ~~department~~ ^{Commission} for an extension of any time limit specified in par. (c) 2. or (d) or a waiver

Commission ✓

1 of a requirement to comply with par. (d). The ~~department~~ ^{Commission} shall grant the extension
2 or waiver if the video service franchisee demonstrates to the satisfaction of the
3 ~~department~~ that the video service franchisee has made substantial and continuous
4 efforts to comply with the requirements of this subsection and that the extension or
5 waiver is necessary due to one or more of the following factors:

6 1. The video service franchisee's inability to obtain access to public and private
7 rights-of-way under reasonable terms and conditions.

8 2. Developments and buildings that are not subject to competition because of
9 exclusive service arrangements.

10 3. Developments and buildings that are not accessible using reasonable
11 technical solutions under commercially reasonable terms and conditions.

12 4. Natural disasters.

13 5. Other factors beyond the control of the video service franchisee.

14 (f) *Alternative technologies.* A video service franchisee may satisfy the
15 requirements of this subsection through the use of an alternative technology, other
16 than satellite service, but only if the alternative technology provides access to PEG
17 channels and messages broadcast over the emergency alert system.

18 (g) *Limitations.* Notwithstanding any other provision of this section, a
19 telecommunications video service provider is not required to provide video service
20 outside the provider's basic local exchange service area, and a video service
21 franchisee that is an incumbent cable operator is not required to provide video
22 service outside the area in which the incumbent cable operator provided cable service
23 at the time the commission issued a video service franchise to the incumbent cable
24 operator.

1 (h) *Broadband service.* 1. If a large telecommunications video service
2 franchisee does not provide access to broadband service to 90 percent of the
3 households in the large telecommunications video service franchisee's
4 telecommunications service area by the first day of the 18th month beginning after
5 the effective date of this subdivision [revisor inserts date], the large
6 telecommunications video service franchisee shall pay to the commission, no later
7 than the first day of the 19th month beginning after the effective date of this
8 subdivision [revisor inserts date], a sum of \$7,500,000.

9 2. If a large telecommunications video service franchisee pays the sum to the
10 commission under subd. 1., the commission shall use that sum to make grants to
11 persons to assist in the deployment of broadband service to underserved areas in this
12 state. The commission shall promulgate rules establishing requirements and
13 procedures for making the grants.

14 **(10) ENFORCEMENT.** (a) The commission may investigate possible violations of
15 this section, except sub. (9) (c) or (d), by video service franchisees. If the commission
16 determines that there is a reason to believe that a video service franchisee has
17 violated or is about to violate this section, except sub. (9) (c) or (d), the commission
18 may bring an action against the video service franchisee to obtain, except as provided
19 in sub. (5) (h), injunctive relief and civil penalties for any act, policy, or practice by
20 the video service franchisee that violates this section, except sub. (9) (c) or (d).

21 (b) The commission may suspend or revoke a video service franchisee's video
22 service franchise if the video service franchisee fails to comply with this section or
23 s. 100.209 after a reasonable time to achieve compliance has passed.

24 **(11) FORFEITURES.** (a) Subject to par. (b):

1 1. A video service franchisee that violates this section shall forfeit no more than
2 \$30,000 for each violation, or .00825 percent of the video service franchisee's
3 statewide gross revenue, as calculated under sub. (7) (a), whichever is greater. Each
4 violation of this section is a separate violation, except that if the same act or omission
5 violates more than one provision of this section, only one forfeiture may be imposed
6 for such act or omission. Each day that a violation continues is a separate violation,
7 except that, if the violation was not intentional, did not create substantial risk to the
8 safety of the video service franchisee's employees or customers or the public, and was
9 not intended to cause economic benefits to accrue to the video service franchisee, the
10 forfeiture for a continuing violation may not exceed \$500,000 per year.

11 2. A video service franchisee that violates sub. (9) shall, in addition to the
12 forfeiture under subd. 1., forfeit an amount not exceeding 3 percent of the video
13 service franchisee's total monthly statewide gross revenue, as calculated under sub.
14 (7) (a), for each month from the date of the violation until the date that compliance
15 is achieved.

16 (b) A court may impose a forfeiture under par. (a) only if the ~~department of~~ *Commission*
17 ~~justice~~ *has* has given the video service franchisee notice of the violation and the
18 opportunity to remedy the violation within 30 days after receipt of the notice and the
19 video service franchisee has failed to remedy the violation.

20 **SECTION 10.** 66.0421 (title) of the statutes is amended to read:

21 **66.0421** (title) **Access to cable video service.**

22 **SECTION 11.** 66.0421 (1) (a) of the statutes is repealed.

23 **SECTION 12.** 66.0421 (1) (b) of the statutes is repealed.

24 **SECTION 13.** 66.0421 (1) (c) of the statutes is created to read:

25 66.0421 (1) (c) "Video service" has the meaning given in s. 66.0420 (2) (v).